IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
September 8, 2008 Session

GARY W. HANNAH, ET AL. v. KENNY K. WANG

Appeal from the Circuit Court for Rutherford County
No. 49424 J. Mark Rogers, Judge

No. M2006-00943-COA-R3-CV - Filed December 19, 2008

Gary W. Hannah and Janet Hannah ("Plaintiffs") sued Kenny K. Wang ("Wang") for damages resulting from a motor vehicle accident. Wang answered the complaint admitting that "he was guilty of simple negligence and that he is one hundred (100%) percent liable for causing this accident…." The Hartford ("Hartford") answered the complaint as the Plaintiffs' uninsured motorist carrier. Hartford filed a motion for summary judgment claiming that its uninsured/underinsured motorist coverage was less than Wang's coverage. After a hearing, the Trial Court entered an order granting summary judgment to Hartford. Plaintiffs appeal to this Court claiming that it was error for the Trial Court to grant summary judgment because a question existed as to whether the statutorily mandated uninsured/underinsured coverage limit had been properly rejected. We find and hold that the statutorily mandated uninsured/underinsured coverage limit was properly rejected and affirm the grant of summary judgment.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed; Case Remanded

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and SHARON G. LEE, SP. J., joined.

Hugh Green and John Meadows, Lebanon, Tennessee for the Appellants, Gary W. Hannah and Janet Hannah.

Andrew N. Grams, Brentwood, Tennessee for the Appellee, The Hartford.

OPINION

Background

This case arose out of a motor vehicle accident that occurred in August of 2000 in Rutherford County, Tennessee when a Wilson County Board of Education ("School Board") van was hit by a vehicle driven by Wang. Plaintiff Gary Hannah, a football coach, was a passenger in the School Board van along with several other school employees acting in the course and scope of their employment.[1] Hartford was served as an unnamed defendant as the uninsured/underinsured motorist carrier for the School Board.

Hartford filed a motion for summary judgment alleging, in part, that the School Board's uninsured/underinsured motorist coverage was $60,000, an amount less than the liability limit of $100,000 per person per incidence available under Wang's policy, and, therefore, Hartford as the uninsured/underinsured motorist carrier would have no liability in this case.[2] The School Board's policy ("the Policy") in effect at the relevant time provided for liability limits of $1 million. Hartford alleged that the School Board had waived uninsured/underinsured motorist coverage in an amount equal to the liability limits and that the Policy instead provided limits of only $60,000 for uninsured/underinsured motorist coverage. Hartford supported its motion with affidavits and documents including a document titled Uninsured/Underinsured Motorists Insurance - Change of Limit or Rejection of Coverage ("Rejection Form"). The Rejection Form shows a handwritten amount of $60,000 in the blank for uninsured/underinsured motorist coverage. The Rejection Form was signed by James L. Francis while serving as the Wilson County school superintendent.

Plaintiffs opposed the motion for summary judgment claiming that there were genuine issues of material fact as to whether the School Board had waived its uninsured/underinsured limits in an amount equal to its liability limits. Plaintiffs filed the affidavit of John M. Clemmons who had served on the Wilson County Board of Education. Mr. Clemmons in his affidavit stated, in pertinent part:

> 5. James Francis as Superintendent did not have the authorization to take action to bind the Wilson County Board of Education to purchase goods or services.
> 6. On various occasions James Francis did purchase goods or services without the approval of the Wilson County School Board.

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[1] Several cases were filed against Wang as a result of this accident. Four of these cases were consolidated by Agreed Order. Plaintiffs Gary W. Hannah and Janet Hannah are the only plaintiffs before us on appeal. For the sake of simplicity, we refer to and discuss the involved matters by references to Plaintiffs Gary W. Hannah and Janet Hannah only.

[2] The Trial Court denied Hartford's initial motion for summary judgment finding "that this matter is not appropriate for summary judgment at this time," but allowing Hartford leave to re-file "upon the completion of additional proof." Hartford later re-filed its motion for summary judgment.

> 7. All contracts for good[s] or services had to be approved by the Wilson County Board of Education.
> 8. The Wilson County Board of Education had an insurance committee for insurance issues. All insurance contracts had to be approved by the Wilson County Board of Education.
> 9. I have reviewed the minutes of the meeting of June 8, 1998, and the attached exhibit B.
> 10. The Board did not discuss a waiver of uninsured/underinsured motorist coverage in voting on approval of Bid 98-15.
> 11. The Wilson County Board of Education did not discuss or approve allowing James Francis to sign a waiver of uninsured/underinsured motorist coverage in 1998.…

Mr. Clemmons also gave a deposition during which he admitted that the minutes of the relevant School Board meeting show that the School Board voted unanimously to accept the bid submitted by Hartford. The Policy was purchased and was renewed on two subsequent occasions.

The Trial Court held a hearing and then entered an order on August 31, 2005 granting Hartford's motion for summary judgment. This order was not made final pursuant to Tenn. R. Civ. P. 54. The case proceeded and two of the consolidated actions were dismissed. The case now before us and one of the other actions proceeded to a final judgment. In the case now on appeal, Plaintiff Gary W. Hannah obtained a judgment against Wang in the amount of $600,000, and Plaintiff Janet Hannah obtained a judgment against Wang in the amount of $50,000. After a final judgment was obtained, Plaintiffs appealed to this Court the Trial Court's grant of summary judgment to Hartford.

Discussion

Plaintiffs raise one issue on appeal: whether the Trial Court properly granted summary judgment to Hartford. Our Supreme Court has described the process for reviewing a trial court's grant of summary judgment as follows:

> The standards governing an appellate court's review of a motion for summary judgment are well settled. Since our inquiry involves purely a question of law, no presumption of correctness attaches to the lower court's judgment, and our task is confined to reviewing the record to determine whether the requirements of Tenn. R. Civ. P. 56 have been met. *See Hunter v. Brown*, 955 S.W.2d 49, 50-51 (Tenn. 1997); *Cowden v. Sovran Bank/Central South*, 816 S.W.2d 741, 744 (Tenn. 1991). Tennessee Rule of Civil Procedure 56.04 provides that summary judgment is appropriate where: (1) there is no genuine issue with regard to the material facts relevant to the claim or defense contained in the motion, *see Byrd v. Hall*, 847

> S.W.2d 208, 210 (Tenn. 1993); and (2) the moving party is entitled to a judgment as a matter of law on the undisputed facts. *See Anderson v. Standard Register Co.*, 857 S.W.2d 555, 559 (Tenn. 1993). The moving party has the burden of proving that its motion satisfies these requirements. *See Downen v. Allstate Ins. Co.*, 811 S.W.2d 523, 524 (Tenn. 1991). When the party seeking summary judgment makes a properly supported motion, the burden shifts to the nonmoving party to set forth specific facts establishing the existence of disputed, material facts which must be resolved by the trier of fact. *See Byrd v. Hall*, 847 S.W.2d at 215.

Staples v. CBL & Assocs., Inc., 15 S.W.3d 83, 88 (Tenn. 2000).

As pertinent to this appeal, Tenn. Code Ann. § 56-7-1201 provides:

> **56-7-1201. Requirements and types of coverage – Presumptions – Limitations of liability. –** (a) Every automobile liability insurance policy delivered, issued for delivery or renewed in this state, covering liability arising out of the ownership, maintenance, or use of any motor vehicle designed for use primarily on public roads and registered or principally garaged in this state, shall include uninsured motorist coverage, subject to provisions filed with and approved by the commissioner, for the protection of persons insured under the policy who are legally entitled to recover compensatory damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness or disease, including death, resulting from injury, sickness or disease.
>
> (1) The limits of the uninsured motorist coverage shall be equal to the bodily injury liability limits stated in the policy.
>
> (2) However, any named insured may reject in writing the uninsured motorist coverage completely or select lower limits of the coverage but not less than the minimum coverage limits in § 55-12-107. Any document signed by the named insured or legal representative that initially rejects the coverage or selects lower limits shall be binding upon every insured to whom the policy applies, and shall be conclusively presumed to become a part of the policy or contract when issued or delivered, regardless of whether physically attached to the policy or contract. Unless the named insured subsequently requests the coverage in writing, the rejected coverage need not be included in or supplemental to any continuation, renewal, reinstatement, or replacement of the policy, or the transfer of vehicles insured under the policy, where the named insured had rejected the coverage in connection with a policy previously issued by the same insurer; provided, that whenever a new application is submitted in connection with any renewal, reinstatement or replacement transaction, this section shall apply in the same manner as when a new policy is being issued.…

Tenn. Code Ann. § 56-7-1201 (2008).

Plaintiffs argue on appeal that the purported waiver of uninsured/underinsured coverage contained in the Rejection Form was ineffective because it was signed only by Superintendent James Francis, whom Plaintiffs argue was not a named insured or legal representative of the School Board and who did not have the authority to sign contracts or to bind the School Board. Hartford argues that the School Board ratified the actions of Superintendent Francis thus rendering the waiver executed by Superintendent Francis valid.

Our Supreme Court discussed ratification in the context of an insurance contract in *Webber v. State Farm Mut. Auto. Ins. Co.* stating:

> A fundamental principle of agency law is that "[a] principal is bound neither by contracts made by a person not his agent, nor by those of his agent beyond the scope of his actual and apparent authority, which he has not ratified and is not estopped to deny." *See, e.g., Bells Banking Co. v. Jackson Ctr., Inc.*, 938 S.W.2d 421, 425 (Tenn. Ct. App. 1996). Although an unauthorized contract is generally voidable by the principal, a principal who ratifies that contract is bound by its terms as if he or she had executed it originally. *See* 12 *Williston on Contracts* § 35.22 (4th ed. 1999) (stating that ratification by a principal "relates back and supplies original authority to execute the contract"). Ratification of a contract occurs when one approves, adopts, or confirms a contract previously executed "by another[,] in his stead and for his benefit, but without his authority." *James v. Klar & Winterman*, 118 S.W.2d 625, 627 (Tex. Ct. App. 1938); *see also Gay v. City of Somerville*, 878 S.W.2d 124, 127 (Tenn. Ct. App. 1994) (defining "ratification" as "the express or implied adoption and confirmation by one person of an act or contract performed or entered into in his behalf by another who assumed to act as his agent without authority so to do"). Simply stated, "[r]atification is confirmation after conduct." *Gay*, 878 S.W.2d at 127.
>
> Before ratification of an unauthorized transaction will be considered valid and binding, the principal must have "'full knowledge, at the time of the ratification, of all material facts and circumstances relative to the unauthorized act or transaction.'" *Gough v. Insurance Co. of N. Am.*, 157 Tenn. 546, 549-50, 11 S.W.2d 887, 888 (1928) (quoting 2 C.J. § 476). Because ratification is usually a question of the principal's intent, this issue is generally regarded as a question of fact to be determined from all of the surrounding circumstances. *See Absar v. Jones*, 833 S.W.2d 86, 89 (Tenn. Ct. App. 1992); *Stainback v. Junk Bros. Lumber & Mfg. Co.*, 98 Tenn. 306, 311, 39 S.W. 530, 531 (1897). However, ratification may be established "from the conduct of the purported principal manifesting that he consents to be a party to the transaction or from conduct justifiable only if there is a ratification." *Osborne Co. v. Baker*, 35 Tenn. App. 300, 305, 245 S.W.2d 419, 421

(1951). As this Court stated in *Memphis Street Railway Company v. Roe*, 118 Tenn. 601, 620, 102 S.W. 343, 348 (1907),

> Where there is a full knowledge of the facts possessed by the principal, and he pursues thereafter a line of conduct which is consistent alone with the theory that the agent was acting for him, then the doctrine of ratification applies, *and it is immaterial whether a ratification was contemplated or not.*

(emphasis added). Consequently, some actions so clearly evidence a principal's intent to ratify the transaction that ratification may be said to have occurred as a matter of law.

* * *

Importantly, though, once a principal commences an action on a contract, he or she may not ratify only the beneficial parts of the contract and disclaim the remainder of the obligations as unauthorized. *James Cable Partners, L.P. v. City of Jamestown*, 818 S.W.2d 338, 344 (Tenn. Ct. App. 1991). As the California Supreme Court has articulated this principle,

> [The plaintiff] must reckon with the elementary rule of agency law that a principal is not allowed to ratify the unauthorized acts of an agent to the extent that they are beneficial, and disavow them to the extent that they are damaging. If a principal ratifies part of a transaction, he is deemed to ratify the whole of it. The reason for the rule is obvious. *Ratification is approval of a transaction that has already taken place. Accordingly the principal has the power to approve the transaction only as it in fact occurred, not to reconstruct it to suit his present needs.*

Navrides v. Zurich Ins. Co., 5 Cal. 3d 698, 97 Cal. Rptr. 309, 488 P.2d 637, 640 (1971) (emphasis added). Accordingly, the law requires that one must either adopt or reject the contract *in toto*. *Security Fed. Sav. & Loan Ass'n of Nashville v. Riviera, Ltd.*, 856 S.W.2d 709, 715 (Tenn. Ct. App. 1992) (citing *Franklin v. Ezell*, 33 Tenn. (1 Sneed) 497, 500-01 (1853)).

Webber v. State Farm Mut. Auto. Ins. Co., 49 S.W.3d 265, 269-272 (Tenn. 2001) (footnotes omitted).

The record on appeal shows that Superintendent Francis executed the Rejection Form that contained a notation of $60,000 in the uninsured motorist coverage space, that the School Board voted to purchase the Policy, and that the Policy was purchased. The record further reveals that the

Policy was renewed on two subsequent occasions with the same $60,000 limitation. The record also shows that the School Board's insurance policy in effect immediately preceding the Hartford policy provided uninsured/underinsured motorist coverage of $60,000.

Even though Plaintiffs argue vehemently that Superintendent Francis did not have the authority to sign the Rejection Form, the School Board clearly ratified this action when it voted to purchase the Policy and then purchased the Policy. The School Board's actions of purchasing the Policy and then renewing it on two subsequent occasions before the accident in 2000 clearly manifest the School Board's ratification of and consent to the transaction. *See, e.g., id*. at 273, 274 (finding that regular payment of the insurance policy premiums without protest and the transfer of the policy on subsequent occasions manifested "intention to fully adopt and ratify the contract…" and further finding that even though plaintiff denied ever reading the statements from the insurance company "he is conclusively presumed to possess full knowledge of the insurance contract provisions as a matter of law."); *Goode v. Daughtery*, 694 S.W.2d 314, 317 (Tenn. Ct. App. 1985) (finding that a wife acted as her husband's agent in applying for automobile insurance and stating "even were it able to be said that she originally acted without her husband's authority, by renewing the policies year after year he would be held to have ratified her action.").

Under Tenn. Code Ann. § 56-7-1201, the Rejection Form "shall be binding upon every insured to whom the policy applies, and shall be conclusively presumed to become a part of the policy or contract when issued or delivered, regardless of whether physically attached to the policy or contract.…" Tenn. Code Ann. § 56-7-1201 (a)(2) (2008).

There are no genuine issues of material fact with regard to whether the Policy contains a valid waiver of uninsured/underinsured motorist coverage in an amount equal to the liability limits, and Hartford is entitled to judgment as a matter of law on the undisputed facts. Given this, we affirm the grant of summary judgment to Hartford.

Conclusion

The judgment of the Trial Court is affirmed, and this cause is remanded to the Trial Court for collection of the costs below. The costs on appeal are assessed against the Appellants, Gary W. Hannah and Janet Hannah, and their surety.

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D. MICHAEL SWINEY, JUDGE